



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0582; FRL– 9820-7]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part, and conditionally approve in part, portions of the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 2008 Lead national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. TDEC certified in its submission ((hereafter referred to as “infrastructure submission)) that the Tennessee SIP contains provisions that ensure the 2008 Lead NAAQS are implemented, enforced, and maintained in Tennessee. With the exception of the portion of section 110(a)(2)(E)(ii) respecting the requirements of section 128(a)(1) of the CAA, EPA has made the determination that the applicable portions of the TDEC’s October 19, 2009, infrastructure submission which are being approved in this final rulemaking meet the infrastructure requirements for the 2008 Lead NAAQS. In this rulemaking, EPA is also taking final action to conditionally approve the portion of Tennessee’s section 110(a)(2)(E)(ii)

infrastructure submission that address section 128(a)(1) requirements. Finally, EPA notes that it is not currently taking final action on the portions of Tennessee's infrastructure submission addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) as they relate to prevention of significant deterioration (PSD) requirements. EPA intends to take final action on those portions of Tennessee's infrastructure submission (the portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) related to PSD requirements) in a separate rulemaking.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0582. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal

holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farnvalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9152. Mr. Farnvalo can be reached via electronic mail at farnvalo.zuri@epa.gov.

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such

NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 Lead NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below¹ and in EPA's October 14, 2011, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)."

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title 1 of the CAA, and (2) submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Accordingly, today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address interstate transport. *See* 76 FR 48208 (August 8, 2011) ("the Transport Rule"). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

On October 5, 1978, EPA promulgated primary and secondary NAAQS for Lead under section 109 of the Act. *See* 43 FR 46246. Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), measured as Lead in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the primary and secondary Lead NAAQS. The revised primary and secondary Lead NAAQS were revised to $0.15 \mu\text{g}/\text{m}^3$. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than October 15, 2011, for the 2008 Lead NAAQS. Tennessee provided its infrastructure submission for the 2008 Lead NAAQS on October 19, 2009.

On March 28, 2012, Tennessee submitted a letter of commitment to EPA to adopt specific enforceable measures related to CAA section 128(a)(1) to address the current deficiencies in the Tennessee SIP related to CAA section 110(a)(2)(E)(ii).

On March 20, 2013, EPA proposed to approve the majority of Tennessee's October 19, 2009, infrastructure submission for the 2008 Lead NAAQS, and proposed in the alternative to conditionally approve the portion of the infrastructure submission related to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the section 128(a)(1) requirements of section 110(a)(2)(E)(ii). *See* 78 FR 17168.

As noted above, EPA's proposed conditional approval of section 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements, was based upon the State's March 28, 2012 commitment letter to address current deficiencies in the Tennessee SIP related to these requirements. Based upon an earlier conditional approval of these section 110(a)(2)(E)(ii) requirements as part of the infrastructure SIP associated with another NAAQS, Tennessee has already committed to submitting to EPA the necessary revisions to address section 128(a)(1) requirements by July 23, 2013. *See* 77 FR 42997. Accordingly, the proposed conditional approval of section 110(a)(2)(E)(ii) as it relates to the section 128(a)(1) requirements for the 2008 Lead infrastructure SIP was conditioned upon the State's commitment to submit the SIP revision(s) adopting specific enforceable measures to address the 128(a)(1) requirements by July 23, 2013.

EPA did not receive any comments, adverse or otherwise, on the March 20, 2013, proposed rulemaking related to Tennessee's 2008 Lead infrastructure submission.

II. This Action

Today's rulemaking finalizes approval of Tennessee's infrastructure submission except for the portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) pertaining to PSD requirements, and the portion of section 110(a)(2)(E)(ii) related to section 128(a)(1) requirements. Today's rulemaking also finalizes conditional approval of the section 110(a)(2)(E)(ii) portion of Tennessee's infrastructure SIP submission related to section 128(a)(1)

requirements.⁵ EPA is not today taking any action with respect to the portions of Tennessee's infrastructure submission related to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). EPA intends to act on these remaining portions of Tennessee's infrastructure submission in a separate rulemaking. See EPA's March 20, 2013, proposed rulemaking at 78 FR 17168 for more detail.

As noted above, EPA received no comments, adverse or otherwise, on its March 20, 2013, proposed actions related to Tennessee's October 19, 2009, infrastructure submission for the 2008 Lead NAAQS. For those portions of Tennessee's October 19, 2009, infrastructure submission that EPA is taking final action on today, EPA has determined that the State's infrastructure submission, with the exception of section 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements,⁶ is consistent with section 110 of the CAA.

EPA is today finalizing a conditional of section 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements⁷ based upon the State's March 28, 2012, commitment letter to adopt specific enforceable measures related to CAA section 128(a)(1) to address the current deficiencies in the Tennessee SIP related to CAA section 110(a)(2)(E)(ii) by July 23, 2013. As a result of Tennessee's March 28, 2012, commitment letter, EPA has determined that conditional approval, specifically pertaining to the requirements of 128(a)(1), is appropriate because the

⁵ EPA is finalizing approval of section 110(a)(2)(E)(ii) as it relates to section 128(a)(2) requirements and finalizing approval of section 110(a)(2)(E)(i) and (iii).

⁶ Section 128(a)(1) requires that the SIP include requirements that any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive any significant portion of their from persons subject to permits or enforcement orders under the CAA.

⁷ EPA is finalizing approval of section 110(a)(2)(E)(ii) as it relates to section 128(a)(2) requirements and finalizing approval of section 110(a)(2)(E)(i) and (iii).

State has explicitly committed to address current deficiencies in the Tennessee SIP related to sub-element 110(a)(2)(E)(ii) consistent with the requirements of CAA section 110(k)(4).

If the State fails to submit the SIP revision by July 23, 2013, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, today's conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, Tennessee's infrastructure SIP will be fully approved in its entirety and replace the conditionally approved element in the SIP.

III. Final Action

EPA is taking final action to approve Tennessee's October 19, 2009, submission for the 2008 Lead NAAQS, with the exception of the State's submission related to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the section 128(a)(1) requirements of section 110(a)(2)(E)(ii). For those sections that EPA is today finalizing approval, EPA has made the determination that TDEC has addressed the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 14, 2011, guidance to ensure that the 2008 Lead NAAQS are implemented, enforced, and maintained in Tennessee. With respect to Tennessee's October 19, 2009, submission for the 2008 Lead NAAQS addressing the section 128(a)(1) requirements of section 110(a)(2)(E)(ii), EPA is conditionally approve the State's

submission based on Tennessee's March 28, 2012, commitment to submit a SIP revision to address the section 128(a)(1) requirements.

Finally, in this rulemaking, EPA notes that it is not taking final action related to the PSD portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). EPA intends to take final action on the portions of Tennessee's infrastructure submission related to the PSD portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) in a separate rulemaking.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Lead.

Dated: May 28, 2013.

A. Stanley Meiburg,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2219 paragraphs (c) and (d) are revised to read as follows:

§ 52.2219 Conditional approval.

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(c) *Conditional Approval*—Submittal from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated October 19, 2009, to address the Clean Air Act (CAA) sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) for the 2008 Lead National Ambient Air Quality Standards. EPA is conditionally approving TDEC's submittal with respect to the PSD requirements of CAA sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), specifically related to the adoption of enforceable provisions for PSD increments as detailed in TDEC's October 4, 2012, commitment letter. Tennessee must submit to EPA by March 6, 2014, a SIP revision adopting specific enforceable measures related to PSD increments as described in the State's letter of commitment.

(d) *Conditional Approval*—Submittal from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated October 19, 2009, to address the Clean Air Act (CAA) section 110(a)(2)(E)(ii) for the 2008 Lead National Ambient Air Quality Standards. With

respect to CAA section 110(a)(2)(E)(ii), specifically related to the adoption of enforceable measures contained in CAA section 128(a)(1), EPA published in the Federal Register a final rulemaking to conditionally approve TDEC's March 28, 2012, commitment on July 23, 2012. Tennessee must submit to EPA by July 23, 2013, SIP revisions adopting specific enforceable measures related to CAA sections 128(a)(1) as described in the State's letter of commitment.

* * * * *

3. Section 52.2220(e) is amended by adding a new entry "110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards" at the end of the table to read as follows:

§ 52.2220 Identification of plan.

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(e) * * *

EPA-Approved Tennessee Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008	Tennessee	10/19/2009	[Insert date of publication in <u>Federal Register</u>]	With the exception of section 110(a)(2)(D)(i)

Lead National Ambient Air Quality Standards			[Insert citation of publication]	(I) concerning interstate transport; the portions of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) related to PSD, which are being conditionally approved; and section 110(a)(2)(E)(ii) as it relates to section 128(a)(1), which is being conditionally approved
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[FR Doc. 2013-14068 Filed 06/17/2013 at 8:45 am; Publication Date: 06/18/2013]